

§ 1.904(g)-0

2006 separate category for passive category income.

(4) *Elimination of certain separate limitation loss accounts.* After application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for passive category income for which income is to be recaptured as passive category income, as determined under those same provisions, shall be eliminated. Similarly, after application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for general category income for which income is to be recaptured as general category income, as determined under those same provisions, shall be eliminated.

(5) *Alternative method.* In lieu of applying the rules of paragraphs (h)(1) through (h)(3) of this section, a taxpayer may apply the principles of paragraphs (g)(1) and (g)(2) of this section to determine recapture in taxable years beginning after December 31, 2006, of separate limitation losses and overall foreign losses incurred in taxable years beginning before January 1, 2007.

(6) *Effective/applicability date.* This paragraph (h) shall apply to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007.

(7) *Expiration date.* The applicability of this paragraph (h) expires on December 20, 2010.

[T.D. 9260, 71 FR 24533, Apr. 25, 2006; 71 FR 77265, Dec. 26, 2006, as amended by T.D. 9368, 72 FR 72591, Dec. 21, 2007; T.D. 9452, 74 FR 27887, June 11, 2009]

§ 1.904(g)-0 Outline of regulation provisions.

This section lists the headings for §§ 1.904(g)-1 through 1.904(g)-3.

§ 1.904(g)-1 Overall domestic loss and the overall domestic loss account.

[Reserved] For further guidance, see the entries for § 1.904(g)-1T in § 1.904(g)-0T.

§ 1.904(g)-2 Recapture of overall domestic losses.

[Reserved] For further guidance, see the entries for § 1.904(g)-2T in § 1.904(g)-0T.

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§ 1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses. [Reserved] For further guidance, see the entries for § 1.904(g)-3T in § 1.904(g)-0T.

[T.D. 9371, 72 FR 72599, Dec. 21, 2007]

§ 1.904(g)-0T Outline of regulation provisions (temporary).

This section lists the headings for §§ 1.904(g)-1T through 1.904(g)-3T.

§ 1.904(g)-1T Overall domestic loss and the overall domestic loss account (temporary).

- (a) Overview of regulations.
- (b) Overall domestic loss accounts.
 - (1) In general.
 - (2) Taxable year in which overall domestic loss is sustained.
- (c) Determination of a taxpayer's overall domestic loss.
 - (1) Overall domestic loss defined.
 - (2) Domestic loss defined.
 - (3) Qualified taxable year defined.
 - (4) Method of allocation and apportionment of deductions.
- (d) Additions to overall domestic loss accounts.
 - (1) General rule.
 - (2) Overall domestic loss of another taxpayer.
 - (3) Adjustments for capital gains and losses.
- (e) Reductions of overall domestic loss accounts.
 - (1) Pre-recapture reduction for amounts allocated to other taxpayers.
 - (2) Reduction for amounts recaptured.
- (f) Effective/applicability date.
- (g) Expiration date.

§ 1.904(g)-2T Recapture of overall domestic losses (temporary).

- (a) In general.
- (b) Determination of U.S. source taxable income for purposes of recapture.
- (c) Section 904(g)(1) recapture.
- (d) Effective/applicability date.
- (e) Expiration date.

§ 1.904(g)-3T Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses (temporary).

- (a) In general.
- (b) Step One: Allocation of net operating loss and net capital loss carryovers.
 - (1) In general.
 - (2) Full net operating loss carryover.
 - (3) Partial net operating loss carryover.

- (4) Net capital loss carryovers.
- (c) Step Two: Allocation of separate limitation losses.
- (d) Step Three: Allocation of U.S. source losses.
- (e) Step Four: Recapture of overall foreign loss accounts.
- (f) Step Five: Recapture of separate limitation loss accounts.
- (g) Step Six: Recapture of overall domestic loss accounts.
- (h) Examples.
- (i) Effective/applicability date.
- (j) Expiration date.

[T.D. 9371, 72 FR 72599, Dec. 21, 2007]

§ 1.904(g)-1 Overall domestic loss and the overall domestic loss account.

[Reserved] For further guidance, see § 1.904(g)-1T.

[T.D. 9371, 72 FR 72599, Dec. 21, 2007]

§ 1.904(g)-1T Overall domestic loss and the overall domestic loss account (temporary).

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's overall domestic losses, for establishing overall domestic loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(g). Section 1.904(g)-2T provides rules for recapturing the balance in any overall domestic loss account under the general recharacterization rule of section 904(g)(1). Section 1.904(g)-3T provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses and overall domestic losses.

(b) *Overall domestic loss accounts—(1) In general.* Any taxpayer that sustains an overall domestic loss under paragraph (c) of this section must establish an account for such loss. Separate overall domestic loss accounts must be maintained with respect to each separate category in which foreign source income is offset by the domestic loss. The balance in each overall domestic loss account represents the amount of such overall domestic loss subject to recapture in a given year. From year to year, amounts may be added to or subtracted from the balances in such accounts as provided in paragraphs (d) and (e) of this section.

(2) *Taxable year in which overall domestic loss is sustained.* When a taxpayer incurs a domestic loss that is carried back as part of a net operating loss to offset foreign source income in a qualified taxable year, as defined in paragraph (c)(3) of this section, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss was incurred and not in the earlier year in which the loss offset foreign source income. Similarly, when a taxpayer incurs a domestic loss that is carried forward as part of a net operating loss and applied to offset foreign source income in a later taxable year, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss offsets foreign source income and not in the earlier year in which the loss was incurred. For example, if a taxpayer incurs a domestic loss in the 2007 taxable year that is carried back to the 2006 qualified taxable year and offsets foreign source income in 2006, the resulting overall domestic loss is treated as sustained in the 2007 taxable year. If a taxpayer incurs a domestic loss in a pre-2007 taxable year that is carried forward to a post-2006 qualified taxable year and offsets foreign source income in the post-2006 year, the resulting overall domestic loss is treated as sustained in the post-2006 year. The overall domestic loss account is established at the end of the later of the taxable year in which the domestic loss arose or the qualified taxable year to which the loss is carried and applied to offset foreign source income, and will be recaptured from U.S. source income arising in subsequent taxable years.

(c) *Determination of a taxpayer's overall domestic loss—(1) Overall domestic loss defined.* For taxable years beginning after December 31, 2006, a taxpayer sustains an overall domestic loss—

(i) In any qualified taxable year in which its domestic loss for such taxable year offsets foreign source taxable income for the taxable year or for any preceding qualified taxable year by reason of a carryback; and

(ii) In any other taxable year in which the domestic loss for such taxable year offsets foreign source taxable income for any preceding qualified taxable year by reason of a carryback.